

PT 98-17

Tax Type: **PROPERTY TAX**

Issue: **Government Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

---

<b>GREATER ROCKFORD AIRPORT</b>	)		
<b>AUTHORITY</b>	)		
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>See attached</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>Exhibit A.</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

---

**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Thomas J. Lester appeared on behalf of the Greater Rockford Airport Authority.

Synopsis:

The hearing in this matter was held on October 16, 1997, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not the 16 Winnebago County Parcel Index Numbers listed in the right-hand column on Exhibit A, attached to the Notice of Decision in this matter, qualified for exemption for the appropriate assessment year.

Exhibit A includes a file number in the left-hand column, the Department of Revenue Docket Number in the center column, and the Winnebago County Parcel Index Number (hereinafter referred to as a "PIN") in the right-hand column. It should be noted that File No. 5

includes two PINs. In an attempt to avoid confusion, all references in this Recommendation For Disposition will be to the file number shown in the left-hand column.

The issues concerning these 15 files include, first, whether the Greater Rockford Airport Authority (hereinafter referred to as the "Applicant") owned the parcels identified by the various file numbers during the appropriate assessment year; secondly, whether the applicant is an airport authority; and lastly, whether the parcels identified by these file numbers were, during the appropriate assessment year, being used for purposes which were primarily airport related. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned these parcels during all or part of the appropriate assessment year. It is further determined that the applicant is an airport authority. It is also determined that the parcels identified by File Nos. 1, 2, 3, 9, 11, 12, and 13 were being used during 1990 for purposes which were not primarily airport related. In addition, it is determined that the parcels identified by File Nos. 6, 8, 10, 14, and 15 were used in part for purposes which were primarily airport related, during 1990, and were also used in part for purposes which were not airport related during that year. It is also determined that the two parcels identified as File No. 5 were used primarily for airport related purposes during part of the 1991 assessment year. Finally, it is determined that the parcels identified as File Nos. 4 and 7 were used for primarily airport related purposes during all of the 1990 assessment year.

#### Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the 16 Winnebago County Parcel Index Numbers identified as File Nos. 1 through 15 did not qualify for exemption for the appropriate assessment year was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On June 12, 1990, the Winnebago County Board of Review transmitted to the Department the Applications for Property Tax Exemption To Board of Review concern File Nos.

1 through 4 and 6 through 15. These files concern applications for exemption for the 1990 assessment year. (Dept. Ex. Nos. 2-1 thru. 2-4 & 2-6 thru 2-15)

3. On December 17, 1991, the Winnebago County Board of Review transmitted to the Department the Application for Property Tax Exemption To Board of Review concerning File No. 5. This file concerns the application for exemption of two parcels for part of the 1991 assessment year. (Dept. Ex. No. 2-5)

4. On July 5, 1990, the Department notified the applicant that it was denying the exemption of the parcels identified as File Nos. 1 through 4 and 6 through 15 for the 1990 assessment year. ( Dept. Ex. Nos. 3-1 thru 3-4 & 3-6 thru 3-15)

5. On February 6, 1992, the Department notified the applicant that it was denying the exemption of the parcels identified as File No. 5 for the 1991 assessment year. (Dept Ex. No. 3-5)

6. On July 24, 1990, and February 17, 1992, hearings concerning these 15 files were requested by the attorneys for the applicant. (Dept. Ex. Nos. 4 & 4-5)

7. The hearing held on October 16, 1997, was held pursuant to those requests.

8. With the exception of the two parcels at issue in File No. 5, which were acquired on May 22, 1991, the parcels at issue in these files were all owned by the applicant on January 1, 1990. (Dept. Ex. Nos. 2-1b, 2-2a, 2-3b, 2-4b, 2-5a, 2-6a, 2-7a, 2-8a, 2-9a, 2-10a, 2-11b, 2-12b, 2-13a, 2-14a, & 2-15a)

9. I take Administrative Notice of the Director's decision in Docket No. 90-101-15 et al., in which it was determined that the applicant was an airport authority.

10. Federal Aviation Authority (hereinafter referred to as the "FAA") regulations, require airports to own and control the use of defined areas beyond the end of the paved portion of runways. This requirement is necessary to prevent the restriction of visibility and also to prevent height obstructions which might reasonably interfere with the landing and taking off of aircraft. These areas are called either clear zones or lateral transition areas. (Tr. pp. 38 & 39, Appl. Ex. No. 3)

11. FAA regulations also require that airports establish noise contours based on the anticipated frequency of take-offs and landings and the size of jet aircraft using the airport. The FAA regulations encourage operators of airports to own and control areas where buildings occupied by humans are located and the noise levels resulting from jet aircraft traffic is anticipated to be intolerably high. During 1990 and 1991, the relevant noise contour in effect at the Greater Rockford Airport was the 1989 noise contour. (Tr. pp. 15 & 20-23, Appl. Ex. No. 3)

12. File No. 1 concerns a parcel which contained 6.33 acres, which during 1990 was leased to Michael Adams for farming. Mr. Adams paid cash rent to the applicant and in exchange therefor was allowed to grow crops thereon and to sell the crops for his own account. During 1990, this parcel was not within the 1989 noise contour. (Tr. pp. 15-19)

13. File No. 2 concerns a parcel which contains 40.22 acres. That parcel was also leased to Michael Adams for farming. This parcel is also outside the 1989 noise contour. (Tr. pp. 24-26)

14. File No. 3 concerns a parcel which contains 29.84 acres and is improved with a residence. The residence and the yard around it were rented to Eugene Gallman for \$50.00 per month during 1990. The remainder of this parcel was leased to Michael Adams for farming during that year. This parcel was acquired by the applicant for future expansion. (Tr. pp. 33 & 34)

15. File No. 4 concerns a parcel which contains 16.3 acres. During 1990, .34 acres of that parcel was improved with a house. The house was rented to a maintenance worker who worked for the applicant. The .34 acre house parcel and yard area, during 1990, was located within the lateral transition area of the clear zone of runway No. 1/19. The applicant mowed and maintained this parcel during 1990. (Tr. pp. 36-40)

16. The two parcels identified as File No. 5, which total 2.72 acres, were purchased by the applicant on May 21, 1991. These parcels were within the 1989 noise contour. The applicant, immediately after purchasing these parcels, auctioned off the houses on these parcels

and had the buyers remove them. Said parcels then remained vacant land during the rest of 1991. (Tr. pp. 42-46)

17. File No. 6 concerns a parcel which contains 6.16 acres. During 1990, 4 acres of that parcel were farmed by Michael Adams. The remaining 2.16 acres were vacant land in 1990. This parcel was purchased by the applicant for future expansion. (Tr. pp. 47-50)

18. File No. 7 concerns a parcel which contains 26 acres. This parcel, during 1990, was mowed and maintained by the applicant. A small portion of this parcel was within the lateral transition area of the clear zone of runway 13/31 in 1990. The applicant put picnic tables on this parcel and it was used as a park by the public. This parcel is held by the applicant for possible future expansion. (Tr. pp. 50-55)

19. File No. 8 concerns a parcel which contains 27.3 acres. During 1990, 23 of these 27.3 acres were leased to Michael Adams for farming. The remaining 4.3 acres were vacant in 1990. This parcel had been purchased to accommodate the relocation of Kishwaukee Road after the extension of runway 7L/25R. (Tr. pp. 55-58)

20. File No. 9 concerns a parcel which contains 5 acres. During 1990, this parcel was leased to Michael Adams for farming. This parcel adjoins the parcel contained in File No. 8 and also had been purchased to accommodate the relocation of Kishwaukee Road. (Tr. pp. 59 & 60)

21. File No. 10 concerns a parcel which contains 17.35 acres. This parcel was also acquired by the applicant in connection with the anticipated extension of runway 7L/25R. During 1990, 6.0 acres of this parcel was leased to Michael Adams for farming. The remainder of this parcel was vacant land maintained by the applicant. (Tr. pp. 60-64)

22. File No. 11 concerns a parcel which contains .41 acres. During 1990, this parcel was improved with a house which was rented to Cecil and Mary Boatwright for \$250.00 per month. A part of this parcel is within the 1989 noise contour and had been purchased to comply with the requirements of this contour. (Tr. pp. 64-68)

23. File No. 12 concerns a 3 acre parcel which in 1990 contained a farm house and several farm outbuildings. During 1990, the outbuildings were rented to Michael Nelson for

\$70.00 per month. Mr. Nelson leased this farmstead to board some horses and other livestock during 1990. The applicant purchased this parcel in anticipation of the extension of runway 7L/25R. (Tr. pp. 68-72)

24. File No. 13 concerns a 2.50 acre parcel which during 1990 was leased for farming to Michael Adams. This parcel had been purchased by the applicant for future expansion. It was outside the 1989 noise contour and not within any clear zone in 1990. (Tr. pp. 73-76)

25. File No. 14 concerns a parcel which contains 13.21 acres. During 1990, 11 acres of this parcel were leased to Michael Adams for farming. 2.21 acres of this parcel were vacant during 1990. None of this parcel was within the 1989 noise contour. This parcel had been acquired by the applicant for future expansion. (Tr. pp. 76-78)

26. File No. 15 concerns a parcel which contains 17 acres. During 1990, 4 acres of this parcel were leased to Michael Adams for farming. The remaining 13 acres of this parcel were a vacant wooded area. This parcel, like several of the others, was acquired by the applicant in anticipation of the relocation of Kishwaukee Road as the result of the extension of runway 7L/25R. This parcel was outside of the 1989 noise contour and all clear zones. (Tr. pp. 78-81)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Illinois Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922).

1989 Illinois Revised Statutes, Chapter 120, Paragraph 500.20, exempts certain property from taxation in part, as follows:

All property of every kind belonging to any Airport Authority and used for Airport Authority purposes . . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In the case of Harrisburg-Raleigh Airport Authority and Fox Valley Airport Authority v. The Department of Revenue, 126 Ill.2d 326 (1989), the Illinois Supreme Court, for the first time, interpreted the provision concerning the exemption of airport authority airports found in Paragraph 500.20. The Court determined that, unlike municipal or county airports whose statutory provision required use for purely public purposes, this provision would allow somewhat more private uses, if they were airport related. The Court determined that the providing of hangars and other facilities for the storage, maintenance, and servicing of private aircraft qualified for exemption under the airport authority exemption provision. The Court also found that the holding of property for future expansion constituted a use of property for airport authority purposes. The Court determined that, while property need not be exclusively used for airport authority purposes to be exempt, its primary current use must be airport related. The Court then found that two parcels, one being used for residential purposes, and the other being

used for farming, even though it appeared that they were being held for future expansion, did not qualify for tax exemption. The Court explained its conclusion as follows:

But we are unable to agree with the appellant that property used primarily for a nonexempt purpose will be exempt if it is also used for an exempt purpose. If this was true, an airport authority could just as easily acquire apartment buildings or goldmines, and hold the land for future expansion while garnering the profits of its enterprises free of property tax. (Harrisburg-Raleigh Airport Authority v. Dept. of Revenue, 126 Ill.2d 326, 343)

Concerning the files containing parcels which were leased to Michael Adams for farming, the applicant received cash rent from Mr. Adams for the right to farm the ground. At the end of the growing season, Mr. Adams harvested the crops, sold them, and used the proceeds of the sale of these crops for his own purposes. The farming of this land, which the applicant asserts is held for future airport development, was not a primarily airport related activity, even though the applicant received certain incidental advantages from the reduction of scrub timber and undergrowth and the reduction of wildlife near the runways. The same is also true of the rental by applicant of the houses and farmsteads it had acquired. The use of these properties in exchange for rent, no matter how nominal, was not primarily airport related. The primary purpose of the applicant in acquiring many of these properties was so the applicant could remove buildings and structures around the airport and thereby increase flight safety, as well as reduce the noise levels in inhabited areas around the airport. The applicants' continued rental of these properties defeated the airport related purposes for which they had been acquired.

The attorney for the applicant cites both the cases of City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955) and Marshall County Airport Board v. Department of Revenue, 163 Ill.App.3d 874 (3rd Dist. 1987) in his brief. The Supreme Court in the Harrisburg-Raleigh decision distinguished the Marshall County case and all of the other municipal airport cases by pointing out that the statutory criteria for the exemption of airport authorities is quite different from that for municipal airports. In the case of municipal airports, the property must be owned by a municipality and used for primarily public purposes. In the case of an airport authority, the



property must be owned by the authority and used for airport authority purposes, as that term is defined in "An Act in relation to airport authorities", 1989 Illinois Revised Statutes, Chapter 15 1/2 Paragraph 68.1 *et seq.*

Based on the foregoing, I conclude that the parcels identified as File Nos. 1, 2, 9, and 13 that were leased to Michael Adams for farming, did not qualify for exemption. I also conclude that the parcel identified as File No. 3, in which the house was leased to Eugene Gallman and the remainder of the parcel was leased to Michael Adams for farming, did not qualify for exemption. The residence on the parcel identified as File No. 11, leased to Cecil and Mary Boatwright, and the farmstead on the parcel identified as File No. 12, leased to Michael Nelson, also did not qualify for exemption since it was not used for airport related purposes.

Concerning the parcel identified as File No. 6, the 4 acres leased to Michael Adams for farming do not qualify for exemption. The remaining 2.6 acres held for future expansion do qualify for exemption during 1990.

The parcel identified as File No. 8 includes 23 acres leased to Michael Adams for farming. These 23 acres do not qualify for exemption. The vacant remaining 4.3 acres held for future expansion does qualify for exemption for 1990.

I also conclude that the parcel identified as File No. 10 includes 6 acres leased to Michael Adams for farming. This 6 acres does not qualify for exemption during 1990. The 11.35 acres, held for future expansion did qualify for exemption during 1990.

Concerning the parcel identified as File No. 14, the 11 acres leased to Michael Adams for farming do not qualify for exemption. The 2.21 acres, which were held for future expansion, did qualify for exemption during 1990.

Concerning the parcel identified as File No. 15, the 4 acres leased to Michael Adams for farming do not qualify for exemption. The 13 acres, which were held for future expansion, did qualify for exemption during 1990.

The parcel identified as File No. 4 which is mowed and maintained by the applicant and which included a house located in the lateral transitional portion of the clear zone, I conclude did qualify for exemption.

The two parcels containing 2.72 acres, identified as File No. 5, were acquired by the applicant on May 22, 1991. These parcels were purchased for future expansion. Soon after their acquisition, the houses on these parcels were removed. I therefore conclude that said parcels qualified for exemption for 62% of the 1991 assessment year.

I conclude that the parcel identified as File No. 7 contains 26 acres. Approximately 10% of that 26 acres was in the lateral transition portion of the clear zone for runway 13/31. This entire parcel, which was mowed and maintained by the applicant, had been purchased for future expansion, and qualified for exemption.

I therefore recommend that the Winnebago County parcels identified as File Nos. 1, 2, 3, 9, 11, 12, and 13 remain on the tax rolls for the 1990 assessment year and be assessed to the applicant, the owner thereof. (Winnebago County PINs 242B-052, 242-502, 231-503, 232-705, 227C-291A, 238-253 & 238-254)

I further recommend that 4 acres of the parcel identified as File No. 6; 23 acres of the parcel identified as File No. 8; 6 acres of the parcel identified as File No. 10; 11 acres of the parcel identified as File No. 14; and 4 acres of the parcel identified as File No. 15 remain on the tax rolls for the 1990 assessment year and be assessed to the applicant. (Winnebago County PINs 231-504, 232-704, 237-001A, 242-501A, & 232-703)

I also recommend that 2.16 acres of the parcel identified as File No. 6, 4.3 acres of the parcel identified as File No. 8, 11.35 acres of the parcel identified as File No. 10, 2.21 acres of the parcel identified as File No. 14, and 13 acres of the parcel identified as File No. 15 be exempt from real estate taxation for the 1990 assessment year. ( Winnebago County PINs 231-504, 232-704, 237-001A, 242-501A, & 232-703)

I further recommend that the parcels identified as File Nos. 4 and 7 be exempt from real estate taxation for the 1990 assessment year. (Winnebago County PINs 230B-251 & 231A-310)

Finally I recommend that the two parcels identified as File No. 5 be exempt from real estate taxation for 62% of the 1991 assessment year. (Winnebago County PINs 227B-105 & 227C-293)

Respectfully Submitted,

---

George H. Nafziger  
Administrative Law Judge  
February 26, 1998